STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
EUFROCINA MENDEZ,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2006CF0839
	)	EEOC NO(S): 21BA60057
and	)	ALS NO(S): 07-645
	)	
THE SENECA HOTEL,	)	
	)	
Respondent.	)	

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8b-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 23rd day of August 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)
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EUFROCINA MENDEZ,	) **Charge No: 2006CF0839**
	) **EEOC No: 21BA60057**
Complainant,	) **ALS No: 07-645**
	)
and	)
	)
THE SENECA HOTEL,	)
	)
Respondent.	)

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion for summary decision. Respondent filed its motion, along with exhibits, on November 13, 2008; Complainant filed a response, along with exhibits, on January 9, 2009; and Respondent filed a reply on September 17, 2008.

This matter is also before me on Complainant's motion to stay, filed July 7, 2009. The parties appeared on the motion on July 29, 2009 and I took the matter under advisement.

CONTENTIONS OF THE PARTIES

Respondent contends that summary decision must be granted because the record presents no issues of material fact as to Complainant's claims of discrimination based on ancestry. Complainant argues that there remain issues of fact as to whether Respondent discriminated against Complainant.

FINDINGS OF FACT

The following facts were derived from uncontested facts in the record and were not the result of credibility determinations. All evidence was viewed in the light most favorable to Complainant.

1. Respondent hired Complainant as a Room Attendant on September 18, 2000. While employed with Respondent, Complainant was a member of UNITEHERE Local 1.

2. Complainant's complaint, filed August 24, 2007, alleges that Complainant: is of Hispanic ancestry; was employed by Respondent as a Housekeeper; performed her duties in a satisfactory manner consistent with Respondent's standards; and was discharged by Respondent on or around October 13, 2005 based on her ancestry. The Complaint further alleges that Respondent's articulated reason for discharging Complainant was because Complainant threatened her supervisor; that Complainant denies threatening her supervisor; that Respondent's reason is pretext for unlawful discrimination; and that Respondent did not discharge similarly situated non-Hispanic employees under similar circumstances.

3. Respondent filed a motion to dismiss on August 8, 2008. After the parties briefed the motion, an order issued on October 9, 2008, ordering that Respondent's requests to admit be deemed admitted and further ordering Complainant to pay Respondent's attorney's fees incurred for preparing its motion to dismiss as a sanction against Complainant for engaging in unreasonable conduct.

4. Pursuant to the requests to admit, which were deemed admitted, Complainant admits the following material facts: (1) Irmco Properties provided Complainant with its Standard of Conduct and Sexual Harassment policy and Complainant signed the document on September 27, 2000. (2) Respondent's Housekeeping Rules and Regulations state that "[a] minimum of 2 written room inspections will be completed for each room attendant daily. Each room attendant must maintain an average of 90% or better, any percentage lower than 90% will be considered unacceptable and the room attendant will be subject to progressive disciplinary

actions." (3) Respondent issued Complainant a warning on April 3, 2005 because she violated Respondent's attendance policy. (4) Respondent issued Complainant another warning on July 17, 2005 because she again violated Seneca's attendance policy. (5) On July 12, 2005, Complainant received a warning for her unsatisfactory work quality, in particular for failing to account for missing glasses, plates and coffee cups in the kitchen cabinets, for leaving a hair on a plate in the kitchen cabinet, for leaving drawers dirty, and for failing to properly make the bed in one of the rooms she was assigned to clean. (6) On September 25, 2005, Complainant again received a warning for her unsatisfactory work quality, in particular for leaving dirty dishes in the dishwasher and for leaving two full garbage bags in one of the rooms she was assigned to clean. (7) Complainant was warned that a subsequent violation would lead to a three-day suspension. (8) Similarly situated non-Hispanic Room Attendants, such as Shatay Goodlow, on October 10, 2005, and Agnes Kusoro, on June 12, 2005, were issued discipline for unsatisfactory work quality. (9) On September 29, 2005, Complainant received a subsequent warning for unsatisfactory work quality. (10) On October 9, 2005, Complainant was suspended for three days as a result of the September 29, 2005 warning and warned that further unsatisfactory work quality would result in termination. (11) On October 9, 2005, Complainant threatened her supervisor, Marzena Kostro. (12) Respondent discharged Complainant effective October 13, 2005.

CONCLUSIONS OF LAW

1. The Illinois Human Rights Commission has jurisdiction over the parties and subject matter of this Complaint.

2. Respondent is an employer as defined by section 5/2-101(B)(1) and Complainant is an aggrieved party as defined by section 5/1-103(B) of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*
3. This record presents no genuine issues of fact as to Complainant's allegation of discharge based on ancestry.
4. Respondent is entitled to summary decision as a matter of law.

DETERMINATION

This record presents no genuine issues of material fact as to the claim alleged in this matter.

DISCUSSION

This matter is being considered pursuant to Respondent's motion for summary decision. A summary decision is analogous to a summary judgment in the Circuit Court. *Cano v Village of Dolton*, 250 Ill App 3d 130, 620 NE2d 1200 (1st Dist 1993). A motion for summary decision is to be granted when the pleadings, depositions, exhibits and affidavits on file reveal that no genuine issue of material fact exists and establish that the moving party is entitled to judgment as a matter of law. See, Section 5/8-106.1 of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*, and *Young v Lemons*, 266 Ill App 3d 49, 51, 203 Ill Dec 290, 639 NE2d 610 (1st Dist 1994). In determining whether a genuine issue of material fact exists, the record is construed in the light most favorable to the non-moving party, and strictly against the moving party. *Gatlin v Ruder*, 137 Ill 2d 284, 293, 148 Ill Dec 188, 560 NE2d 586 (1990); *Soderlund Brothers, Inc., v Carrier Corp.*, 278 Ill App 3d 606, 614, 215 Ill Dec 251, 663 NE 2d 1 (1st Dist 1995). A summary order is a drastic method of disposing of a case and should be granted only if the right of the moving party is clear and free from doubt. *Loyola Academy v S&S Roof Maintenance, Inc.,*146 Ill 2d 263, 271, 166 Ill Dec 882, 586 NE2d 1211 (1992);

McCullough v Gallaher & Speck, 254 Ill App 3d 941, 948, 194 Ill Dec 86, 627 NE2d 202 (1st Dist 1993).

Although Complainant is not required to prove her case to defeat the motion, she is required to present some factual basis that would arguably entitle her to a judgment under the law. *Birck v City of Quincy*, 241 Ill App 3d 119, 608 NE2d 920, 181 Ill Dec 669 (4th Dist 1993) citing, *inter alia*, *West v Deere & Co.*, 145 Ill 2d 177, 182, 164 Ill Dec 122, 124, 582 NE2d 685, 687 (1991).

A Complainant bears the burden of proving discrimination by the preponderance of the evidence. Section 5/8A -102 (I) (1) of the Act. That burden may be satisfied by direct evidence that adverse action was taken for impermissible reasons or through indirect evidence in accordance with the method set out in *McDonnell Douglas Corp. v Green,* 411 US 793, 93 S Ct 1817 (1973), and *Texas Dept. of Community Affairs v Burdine,* 450 US 248, 101 S Ct 1089 (1981). This method of proof has been approved by the Illinois Supreme Court and adopted by the Commission in *Zaderaka v Illinois Human Rights Commission*,131 Ill 2d 172, 545 NE2d 684 (1989).

Under this three-step approach, a complainant must first establish a *prima facie* case of unlawful discrimination. Then, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its adverse action. Once the respondent successfully makes this articulation, the presumption of unlawful discrimination drops and the complainant is required to prove, by a preponderance of the evidence, that the respondent's articulated reason is a pretext for unlawful discrimination.

Respondent hired Complainant as a Room Attendant on September 18, 2000. Complainant's complaint, filed August 24, 2007, alleges that Complainant: is of Hispanic ancestry; was employed by Respondent as a Housekeeper; performed her duties in a satisfactory manner consistent with Respondent's standards; and was discharged by Respondent on or around October 13, 2005 based on her ancestry. The Complaint

further alleges that Respondent's articulated reason for discharging Complainant was for threatening her supervisor; that Complainant denies threatening her supervisor; that Respondent's reason is pretext for unlawful discrimination; and that Respondent did not discharge similarly situated non-Hispanic employees under similar circumstances.

Respondent filed a motion to dismiss on August 8, 2008. After the parties briefed the motion, an order issued on October 9, 2008, ordering that Respondent's requests to admit be deemed admitted and further ordering Complainant to pay Respondent's attorney's fees incurred for preparing its motion to dismiss as a sanction against Complainant for engaging in unreasonable conduct. Respondent was ordered to file an attorney's fee petition for a determination of appropriate fees. Respondent failed to do so, and thus, has waived its right to attorney's fees pursuant to the sanction.

Complainant's allegations do not present facts to establish a direct case of discrimination. Proving discrimination by direct evidence entails providing evidence which, "if believed by the trier of fact, will prove the particular fact in question without reliance upon inference or presumption." *Randle v LaSalle Telecommunication*, Inc. 876 F2d 563, 569 (7th Cir 1989). In the employment discrimination context, direct evidence relates to what an employer did and/or said regarding a particular employment decision. Where there is direct evidence of discrimination, it is unnecessary to use the indirect method as set out in the *Burdine* analysis. *Gregan and Rock Island Housing Authority*, IHRC, 3756, June 29, 1992. Here, Complainant's claims are analyzed pursuant to the indirect method.

In order to prove a *prima facie* case of discrimination based on ancestry, Complainant must show that: (1) she is a member of the protected classes; (2) she was performing her job according to Respondent's legitimate expectations; (3) she suffered an adverse employment action; and (4) other individuals not within her protected classes

were treated more favorably. *Hill v American National Can Co.*, IHRC, 9644, Nov. 30, 1999.

Respondent's motion for summary decision relies on its requests to admit, which were deemed admitted. Respondent argues successfully that, pursuant to these admissions, Complainant cannot prove two elements of her *prima facie* case. Specifically, Respondent argues that Complaint cannot prove she was meeting Respondent's legitimate expectations or that similarly situated employees outside of her protected class were treated more favorably.

Pursuant to the requests to admit, which were deemed admitted, Complainant admits the following material facts: (1) Irmco Properties provided Complainant with its Standard of Conduct and Sexual Harassment policy and Complainant signed the document on September 27, 2000. (2) Respondent's Housekeeping Rules and Regulations state that "[a] minimum of 2 written room inspections will be completed for each room attendant daily. Each room attendant must maintain an average of 90% or better, any percentage lower than 90% will be considered unacceptable and the room attendant will be subject to progressive disciplinary actions." (3) Respondent issued Complainant a warning on April 3, 2005 because she violated Respondent's attendance policy. (4) Respondent issued Complainant another warning on July 17, 2005 because she again violated Seneca's attendance policy. (5) On July 12, 2005, Complainant received a warning for her unsatisfactory work quality, in particular for failing to account for missing glasses, plates and coffee cups in the kitchen cabinets, for leaving a hair on a plate in the kitchen cabinet, for leaving drawers dirty, and for failing to properly make the bed in one of the rooms she was assigned to clean. (6) On September 25, 2005, Complainant again received a warning for her unsatisfactory work quality, in particular for leaving dirty dishes in the dishwasher and for leaving two full garbage bags in one of the rooms she was assigned to clean. (7) Complainant was warned that a subsequent

violation would lead to a three-day suspension. (8) Similarly situated non-Hispanic Room Attendants, such as Shatay Goodlow, on October 10, 2005, and Agnes Kusoro, on June 12, 2005, were issued discipline for unsatisfactory work quality. (9) On September 29, 2005, Complainant received a subsequent warning for unsatisfactory work quality. (10) On October 9, 2005, Complainant was suspended for three days as a result of the September 29, 2005 warning and warned that further unsatisfactory work quality would result in termination. (11) On October 9, 2005, Complainant threatened her supervisor, Marzena Kostro. (12) Respondent discharged Complainant effective October 13, 2005.

Complainant's response does nothing to raise issues of fact as to Complainant's *prima facie* elements. While Complainant argues that the admissions do not eliminate complainant's material facts of harassment and discrimination by Respondent, Complainant presents nothing to refute the factual admissions concerning the discipline meted out to Complainant for poor performance. This unrefuted evidence supports that Complainant was not performing to expectations; thus, there remain no material issues of fact as to this element. Further, Complainant submits no evidence identifying any similarly situated employees who were treated more favorably than she. Moreover, pursuant to the requests to admit, Complainant admits that Shataya Goodlow and Agnes Kusoro were two similarly situated non-Hispanic Room Attendants, who were also issued disciplined for unsatisfactory work quality. This undisputed evidence supports that no issues of fact remain as to whether similarly situated non-Hispanic employees were treated more favorably.

Next, Respondent argues that even if Complainant could make out a *prima facie* case, she cannot establish that Respondent's proferred reason for discharging her is pretextual. Complainant alleges in her Complaint that Respondent's articulated reason for discharging her was that she threatened her supervisor and that she denies

threatening her supervisor. Here, Respondent points to Complainant's admissions in the requests to admit that, on October 9, 2005, Complainant threatened her supervisor, Marzena Kostro, and that Respondent discharged Complainant effective October 13, 2005. Again, Complainant presents no evidence whatsoever to create any issues of fact as to the showing of pretext.

RECOMMENDATION

Based on the foregoing, this record presents no genuine issues of material fact and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that Respondent's motion for summary decision be granted and that the complaint in this matter be dismissed in its entirety with prejudice. Because of this ruling, Complainant's motion to stay is moot.

HUMAN RIGHTS COMMISSION

August 12, 2009

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section